



GAO

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Metropolitan Interpreters & Translators

File: B-285394.2; B-285394.3; B-285394.4

Date: December 1, 2000

Patrick K. O'keefe, Esq., and Thomas F. Burke, Esq., McKenna & Cuneo, for the protester.

Pamela J. Mazza, Esq., and Philip M. Dearborn III, Esq., Piliero, Mazza & Pargament, for Comprehensive Technologies International, Inc., an intervenor.

J. Michael Sawyers, Esq., Drug Enforcement Administration, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of award of contract for linguist services is denied where agency reasonably determined technical advantages of the awardee's proposal were worth its higher price; awardee's proposal was evaluated superior to protester's under the second and third most important technical evaluation factors, both proposals were evaluated acceptable under most important factor, and technical considerations were substantially more important than price.

DECISION

Metropolitan Interpreters & Translators protests the Drug Enforcement Administration's (DEA) award of a contract to Comprehensive Technologies International, Inc. (CTI) under request for proposals (RFP) No. DEA-99-R-0004, for linguist services for DEA's New York Field Division (NYFD). Metropolitan primarily challenges the technical evaluation.

We deny the protest.

The RFP anticipated the award of a fixed-price, indefinite-delivery/indefinite-quantity labor-hour contract, for a base year with 4 option years, for linguist services—including monitoring, transcribing and interpreting—and automated data processing (ADP) services in support of judicially authorized communications intercepts. Although the majority of the linguist work required is for translating

Spanish to English, the contractor is required to furnish upon request linguists knowledgeable and proficient in 42 specified languages and dialects, as well as in numerous other generally described languages (e.g., “[a]ll other Eastern European,” “[a]ll other Western/European,” and “[a]ll other Asian”). RFP, Statement of Work (SOW), § C.10. The RFP specified a required core unit of 23 persons—a project manager, 10 linguists, 2 linguist supervisors, a clerical assistant, 2 computer data librarians, an ADP task manager, 2 communications specialists, 2 computer programmers, a senior data technician, and a systems analyst—for whom offerors were to furnish resumes and letters of commitment. SOW §§ C.2, C.11; RFP § L.6-3, at L-20. However, while the minimum workload under the contract required only 12 core linguists and linguist supervisors, the maximum workload under the contract required 205 linguists and linguist supervisors. RFP § B.9.

Award was to be made to the responsible offeror whose conforming proposal represented the best value, and was most advantageous to the government. RFP § M.2(A). The RFP provided for proposals to be evaluated based on the following seven enumerated evaluation factors: (1) offeror’s ability to furnish qualified personnel to perform the required services, including consideration of the quality and qualifications of the proposed core personnel, the offeror’s ability to furnish additional personnel beyond the core personnel, and whether the offeror has demonstrated “by reasoning or evidence that the hiring/selection and retention policies/procedures are adequate to support successful performance”; (2) quality control plan; (3) management plan and ability to manage all aspects of the contract, including corporate commitment, hiring, retaining and training employees, scheduling, security issues, reporting requirements, performance risk, schedule risk, and cost risk; (4) security plan; (5) past performance/risk assessment, under which the agency was to consider the offeror’s previous work experience in similar or related work, performance improvements, and completed past performance surveys and ratings; (6) compliance with the RFP instructions; and (7) cost/price. RFP § M.5. The RFP stated that the seven factors, as set forth above, were “listed in equal or descending order of importance,” RFP § M.5, but it also added that the “technical factors . . . are in descending order of importance,” and that the “combination of all technical factors is substantially more important than the cost/price.” RFP § M.2.

Six proposals were received in response to the RFP; only Metropolitan’s and CTI’s were included in the competitive range. DEA furnished these offerors with written discussion questions, afforded them an opportunity to request clarification of the questions, and requested revised proposals. The final evaluation results are set out in the following chart:

	CTI	Metropolitan
TECHNICAL		
Qualified Personnel	Acceptable	Acceptable
Quality Control Plan	Exceptional	Acceptable
Management Plan	Exceptional	Acceptable
Security Plan	Acceptable	Acceptable
Overall Past Performance/Risk Assessment	Acceptable	Exceptional
Relevancy	Exceptional	Exceptional
Performance Improvements	Acceptable	Acceptable
Past Performance Surveys	Acceptable	Exceptional
Compliance with the RFP	Acceptable	Acceptable
OVERALL TECHNICAL	Acceptable	Acceptable
Evaluated Cost/Price	\$84,411,097	\$(DELETED)

Although Metropolitan's evaluated price was lower than CTI's, and both proposals were rated acceptable overall, DEA determined that there was less overall risk associated with CTI's proposal and that the lesser risk was worth the additional cost of the proposal. In this regard, the agency determined that Metropolitan's proposal provided insufficient assurance of its ability to recruit and retain new employees; CTI's quality control plan was exceptional, while Metropolitan's was only acceptable; Metropolitan proposed [DELETED] under which the lines of responsibility and authority were not clear, and which failed to provide for [DELETED]; and CTI's proposal indicated the availability of financial resources which would be useful in performing the contract. DEA determined that CTI's proposal represented the best value to the government.

Upon learning of the resulting award to CTI, and after being debriefed by the agency, Metropolitan filed this protest with our Office. Metropolitan raises numerous arguments. We discuss the principal arguments below.

ABILITY TO FURNISH QUALIFIED PERSONNEL

Metropolitan challenges the agency's evaluation of offerors' ability to furnish qualified personnel. In this regard, as noted above, although DEA rated both proposals as acceptable under this factor, the agency evaluated Metropolitan's as weak and took this weakness into account in the tradeoff analysis. Metropolitan essentially argues that DEA's criticism unreasonably failed to account for the fact that Metropolitan was furnishing the majority of the staffing for this requirement. In this regard, Metropolitan asserts that, of the 55 to 70 linguists employed by DEA's NYFD in the last year, it was furnishing 49 of the linguists in the period immediately before submission of initial proposals and 47 of the linguists in the period immediately before submission of revised proposals. In addition, Metropolitan states that its proposed ADP subcontractor was furnishing all of the ADP personnel supporting the NYFD's communications intercept operations. Metropolitan

Comments, Oct. 31, 2000, Declaration of Metropolitan New York Project Manager, at 4-5. DEA confirms that, while the percentage varied over time, Metropolitan furnished as much as approximately 65 percent of the fiscal year 2000 NYFD linguist requirement. In contrast, while CTI's team had significant linguist contracts at a number of locations around the country (e.g., in California, Texas and at DEA's headquarters in Virginia), and [DELETED] of its proposed 23 core staff were currently working at the NYFD, DEA reports that CTI furnished only approximately 10 percent of the NYFD's linguist requirement and 90 percent of its ADP requirement from 1992 to 1997, and a CTI team member was furnishing only approximately 10 percent of the linguist requirement at the time of award. Agency Comments, Oct. 27, 2000, at 1. (According to Metropolitan, it has furnished 90 percent of the NYFD's linguist requirement since April 2000. Metropolitan Comments, Oct. 31, 2000, Declaration of Metropolitan New York Project Manager, at 5.) Metropolitan concludes that, in finding its proposal weak in this area, the agency failed to account for the fact that all of its 23 proposed core unit personnel, as well as [DELETED] additional non-core staff for whom it furnished resumes, are "incumbent" staff working for Metropolitan team members in the NYFD.¹

DEA recognized in its evaluation that Metropolitan was proposing to retain qualified incumbent employees. Source Selection Document--Final Offer at 4. In this regard, we note that Metropolitan furnished letters of commitment, not only for its 23 core linguists and ADP personnel, but also for [DELETED] additional linguists ([DELETED] for Spanish and [DELETED] for other languages) employed by Metropolitan team members, and furnished resumes for a number of other linguists, some of whom apparently were employed by Metropolitan team members. (CTI also proposed to recruit qualified incumbent and former linguists at the NYFD. CTI Technical Proposal at 18, 23.) DEA found, however, that Metropolitan's proposal did not demonstrate how, over the long run, qualified personnel would be provided. As stated in the agency's evaluation of proposals, "the retention plan and training of new employees were not fully addressed in the final offer. . . . Metropolitan did not

¹ Metropolitan further alleges that CTI's proposed [DELETED] should have been found unacceptable because he previously had been escorted from DEA's NYFD's facilities and will not be permitted access to the facilities in the future. However, DEA has furnished a declaration from an assistant special agent-in-charge of the NYFD, in which she states that, while there appears to have been an incident involving this individual over 8 years ago, the agency has not determined that he is unacceptable on that account; according to the assistant special agent-in-charge, the proposed [DELETED] will be subject to the normal screening and background check required of any new contract employee, and she has no basis for concluding that he will be found unacceptable simply due to the prior incident. DEA Comments, Nov. 7, 2000, Declaration of Assistant Special Agent-in-Charge NYFD. Given DEA's position, there simply is no basis to find that CTI's proposed [DELETED] was unacceptable so as to render CTI's proposal noncompliant with the RFP's staffing requirements.

demonstrate that the proposed recruitment and retention plan would mitigate any future performance problems.” Source Selection Document–Final Offer at 4. DEA concludes that it reasonably found a weakness in Metropolitan’s proposal in this area.

In reviewing an agency’s evaluation of proposals and source selection decision, our review is confined to a determination of whether the agency acted reasonably and consistent with the stated evaluation factors and applicable procurement statutes and regulations. Main Bldg. Maintenance, Inc., B-260945.4, Sept. 29, 1995, 95-2 CPD ¶ 214 at 4.

Preliminarily, the agency’s focus on the offerors’ ability to recruit new, additional employees and retain their workforce over time was reasonable. As noted above, the RFP contemplated a contract period of up to 5 years and provided for the possibility of a significant increase in workload over that period; while the minimum workload under the RFP required only 12 core linguists and linguist supervisors, the maximum workload required 205 linguists and linguist supervisors. RFP § B.9. In other words, the maximum workload with respect to linguists the contractor could be required to furnish was nearly three times the prior maximum workload (according to the protester) in the periods prior to submission of initial and revised proposals and approximately four times the level of staffing furnished by Metropolitan team members during those periods. Metropolitan Comments, Oct. 31, 2000, Declaration of Metropolitan New York Project Manager, at 4-5.²

We also find nothing unreasonable in DEA’s evaluation of the proposals in this area. With respect to the proposed approaches to satisfying future staffing requirements, Metropolitan’s and CTI’s proposals included many of the same details. For example, both proposals discussed: [DELETED]. Metropolitan Technical Proposal at 2-4, 2-19 to 2-20, 2-23 to 2-25, 4-8, and 5-3 to 5-17; Metropolitan Discussion Response at 1, 3 and 5; CTI Technical Proposal at 16-18, 20-22, and 93-100; CTI Discussion Response at 2. In addition, both proposals discussed approaches to ensuring that work will be available to linguists on a continuing basis, thus facilitating recruitment and retention. Metropolitan proposed [DELETED] during lulls in work at the DEA facility and while employees are awaiting the required DEA security clearance, while CTI described in its proposal its success in offering employees faced with downtime [DELETED]. Metropolitan Technical Proposal at 2-26; Metropolitan Discussion Response at 1, 3, 5; CTI Technical Proposal at 27. Further, both offerors claimed low linguist turnover rates: Metropolitan identified a staff turnover rate of about [DELETED] percent per year, while CTI claimed a retention rate over the past

² The number of linguists furnished by Metropolitan after April 2000 is unclear.

3 years of [DELETED] percent for translators (and [DELETED] percent for ADP personnel). Metropolitan Technical Proposal at 2-25; CTI Technical Proposal at 22.³

Beyond these similarities, however, CTI's proposal furnished additional detail in several significant areas. For example, CTI proposed to recruit through [DELETED]. CTI Technical Proposal at 17; CTI Discussion Response at 2. Further, CTI's proposal included details regarding the fringe benefits it offers its staff, including [DELETED]. CTI Technical Proposal at 23-25, 33. In contrast, although Metropolitan's proposal indicated that it would [DELETED] for its linguists, it generally stated only that "[w]e offer [DELETED]" and that the firm [DELETED] for current linguistic and ADP incumbent employees. Metropolitan Technical Proposal at 2-19; Metropolitan Discussion Response at 4-5.⁴ We think that, in the evaluation of the firm's ability to recruit additional linguists and retaining existing staff over the potential 5-year period of the contract, DEA reasonably could view Metropolitan's failure to more specifically describe its fringe benefits as a relative weakness. It follows that DEA reasonably could differentiate between the proposals on this basis.

MANAGEMENT PLAN

Metropolitan challenges the agency's evaluation of the offerors' proposed management plans. In this regard, a significant factor in the evaluation under this factor was the evaluated weakness of Metropolitan's proposed organizational approach to performing the contract. RFP § M.5(3); Source Selection Document--Final Offer at 7, attach. 5, Trade-off Analysis; Contracting Officer's Statement at 4-6. As noted by the agency, Metropolitan provided in its proposal that [DELETED]. Metropolitan Technical Proposal at 4-62. In addition, Metropolitan's proposal provided that [DELETED]. Metropolitan Technical Proposal at 2-18, 4-4, and 4-13; Society of Federal Linguists, Newsletter, Online Version, Nov. 1999, at <www.federal-linguists.org>.

³ As noted by Metropolitan, the public record reflects a decrease in CTI's overall workforce from 490 in 1996 to 250 in both 1998 and the most recent year for which information is available. Metropolitan Initial Protest, Tab 3. CTI attributes this to a reduction in the number of contracts, noting that it became ineligible to compete for some requirements for which it previously held contracts when it graduated from the Small Business Administration's 8(a) program and became other than small. CTI Comments, Oct. 11, 2000, at 4.

⁴ Metropolitan's proposal also generally indicated that its team member furnishing ADP personnel offers [DELETED]. Metropolitan Technical Proposal at 4-77. Metropolitan also proposed [DELETED]. Metropolitan Technical Proposal at 6-4; Metropolitan Discussion Response at 6.

During discussions, DEA asked Metropolitan to explain its organizational approach. The agency advised Metropolitan that the “proposed management plan shows [DELETED],” and that this management approach “defeats the purpose of having a prime contractor responsible for the entire NYFD requirement.” Agency Discussion Questions to Metropolitan, Apr. 7, 2000, at questions 18, 19. In its response, Metropolitan stated that the contract would be performed by an integrated team in which it would be the sole provider of program and contract management support and would be responsible for all aspects of the contract; Metropolitan denied any intention that [DELETED] would have an active role in meetings, administrative functions and operational reports, and indicated that these functions would be [DELETED]. Metropolitan Discussion Response at 9-10. DEA, however, continued to view Metropolitan’s proposed team approach as potentially diminishing the benefit of having a single prime contractor; according to the agency, the arrangement posed schedule and performance risk because there were no clear lines of responsibility and authority within the team. Source Selection Document–Final Offer at 7.

The agency’s concern was reasonable. It is undisputed that having multiple contractors could potentially cause performance problems. As acknowledged by Metropolitan (as well as CTI) in its proposal, DEA has had prior problems dealing with multiple contractors in connection with its communications intercept operations; indeed, Metropolitan’s proposal appears to attribute “the fractious environment noted within the New York wire room and ancillary operations” to having “many independent company representatives.” Metropolitan Technical Proposal at 4-3; CTI Technical Proposal at 6; Source Selection Document–Final Offer, attach. 5, Trade-off Analysis. Notwithstanding Metropolitan’s assertion that it would be responsible for all aspects of the contract, we think the agency reasonably could conclude from (1) [DELETED], and (2) [DELETED], that the lines of responsibility and authority within the Metropolitan team remained unclear and that in practice management of the contract could be fractured, such that there was potential performance risk inherent in Metropolitan’s management approach.

Metropolitan asserts that the agency’s concern should have extended equally to CTI’s proposed approach, which provided for a [DELETED] consisting of senior representatives of CTI and its [DELETED]. CTI Technical Proposal at 80. However, there was a reasonable basis for distinguishing between CTI’s proposal of [DELETED] and Metropolitan’s proposal of [DELETED]; that is, the agency reasonably could conclude from the descriptions of the two approaches that Metropolitan’s [DELETED] would be more involved in the operational management of the contract effort than would CTI’s [DELETED]. *Id.* at 74-75, 80. Further, the apparent participation of [DELETED] in Metropolitan’s contract effort could only magnify any concern as to the unified contract effort likely under Metropolitan’s approach. We conclude that the evaluation in this area was reasonable.

BAIT AND SWITCH

Metropolitan alleges that CTI misrepresented the availability of its proposed core personnel. As noted, the RFP specified a required core unit of 23 persons—including a project manager, 10 linguists, 2 linguist supervisors, a clerical assistant, 2 computer data librarians, an ADP task manager, 2 communications specialists, 2 computer programmers, a senior data technician, and a systems analyst—who were considered to be “essential for the successful completion of all work assigned under this contract,” and for whom offerors were to furnish resumes and letters of commitment. SOW §§ C.2, C.11; RFP §§ H.13, H.14, L.6-3 at L-20. Metropolitan cites as evidence that CTI misrepresented the availability of its proposed core personnel the fact that CTI began immediately after award to attempt to recruit incumbent ADP personnel; it further points to the fact that CTI has acknowledged that it will replace 7 of the 23 proposed core personnel.

An offeror may not propose to use specific personnel that it does not expect to use during contract performance; doing so would have an adverse effect on the integrity of the competitive procurement system and generally provide a basis for proposal rejection. CBIS Fed. Inc., B-245844.2, Mar. 27, 1992, 92-1 CPD ¶ 308 at 5. The elements of such a “bait and switch,” that would render a contract award improper, are as follows: (1) the awardee represented in its proposal that it would rely on certain specified personnel in performing the services; (2) the agency relied on this representation in evaluating the proposal; and (3) it was foreseeable that the individuals named in the proposal would not be available to perform the contract work. Ann Riley & Assocs., Ltd.—Recon., B-271741.3, Mar. 10, 1997, 97-1 CPD ¶ 122 at 2-3.

There is no basis for concluding that CTI misrepresented its intentions with respect to proposed personnel. CTI has explained the circumstances of its inability to secure the services of each of the unavailable proposed core individuals. CTI has furnished an affidavit in which its Senior Vice President for Operations explains that it intended to perform the contract with its proposed core personnel but that when it contacted them after the July 28, 2000 notification of award, 7 of the 23 core personnel—including [DELETED]—stated that they were unable to honor their letters of commitment (executed in September and November 1999). Among the reasons cited were the acceptance of positions with other companies, an intended move to Mexico, and a desire to remain in Puerto Rico. Declaration of CTI Senior Vice President for Operations. These explanations, which we find credible, support the view that the employee substitutions were not part of an improper “bait and switch.” Moreover, the substitution of incumbent employees with an agency’s permission, and where there has been no misrepresentation, is not an improper “bait and switch.” Airwork Ltd.-Vinnell Corp. (A Joint Venture), B-285247, B-285247.2, Aug. 8, 2000, 2000 CPD ¶ ____ at 6; A&T Eng’g Techs., VECTOR Research Div., B-282670, B-282670.2, Aug. 13, 1999, 99-2 CPD ¶ 37 at 8. Here, CTI expressly stated in its proposal that [DELETED]. CTI Technical Proposal at 23. We thus conclude that Metropolitan’s arguments in this regard are without merit.

OTHER ISSUES

Metropolitan alleges that there was an organizational conflict of interest arising from the fact that the spouse of the owner of a subcontractor proposed by CTI is a DEA diversion investigator in the NYFD. According to the protester, the investigator allegedly offered advice to CTI personnel on testing results and with respect to conference costs during a visit to CTI's staff during a 3-day recruiting conference held at a hotel in October 1999. DEA, however, reports that the investigator had no involvement in the procurement process, and the record furnishes no basis for questioning its position in this regard. Contracting Officer's Statement at 9; DEA Comments, Oct. 27, 2000, at 3-4; Declaration of DEA Diversion Investigator; see CTI Comments, Oct. 31, 2000, Declaration of CTI Division Manager.

Metropolitan also challenges DEA's consideration of offerors' financial resources. DEA noted during the evaluation that CTI's offer indicated the availability of [DELETED] and that such resources were critical to successfully performing the contract here; DEA noted that the agency historically has been late in paying invoices, and concluded that [DELETED] would permit the contractor to meet its payroll and pay subcontractors, thereby avoiding any disruption of service due to late payments under the contract. The agency found that Metropolitan's failure to specify comparable resources represented a performance risk. Source Selection Document-Final Offer, attach. 5, Trade-off Analysis. Metropolitan argues that DEA's failure to advise it during discussions of the agency's concern in this regard rendered the discussions inadequate. See FAR § 15.306(d)(3); Du and Assocs., Inc., B-280283.3, Dec. 22, 1998, 98-2 CPD ¶ 156 at 7 (discussions must be meaningful, equitable, and not misleading).

Competitive prejudice is necessary before we will sustain a protest; where the record does not demonstrate that the protester would have a reasonable chance of receiving award but for the agency's actions, we will not sustain a protest, even if a deficiency in the procurement is found. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). We find no competitive prejudice here. Metropolitan does not argue that it did not know that DEA historically has been late in paying invoices, nor has it shown the existence of other available comparable financial resources that it would have offered had it been advised of the agency's concern with respect to financing contract performance. Northrop Worldwide Aircraft Servs., Inc.--Recon., B-262181.3, June 4, 1996, 96-1 CPD ¶ 263 at 3. Rather, Metropolitan simply points to the financial statements it submitted with its proposal, its general representation that it has "sufficient lines of credit and cash reserves," and the fact that it has previously furnished a significant portion of NYFD's linguist requirement, as evidence of its capability to finance performance. Metropolitan Business Management Proposal at 1, § 5; Metropolitan Comments, Sept. 22, 2000, at 15. None of these references establish that Metropolitan has [DELETED] that could be relied on when DEA is late in paying contractor invoices.

Metropolitan challenges DEA's consideration of offerors' accounting systems. DEA noted during the evaluation that CTI's proposal indicated that the company had an accounting system that was approved by the Defense Contract Audit Agency (DCAA) as adequate for accumulating, reporting and billing costs on government contracts, and that thus could be used to track the costs associated with any necessary contract modifications. Source Selection Document--Final Offer, attach 5, Trade-off Analysis. (As explained in a declaration by its Vice President of Operations, Metropolitan's Cost Monitoring and Control System "tracks [DELETED]."

Metropolitan Comments, Oct. 31, 2000, Declaration of Metropolitan Vice President of Operations at 10.) Metropolitan asserts that a cost-based accounting system was not required under the solicitation, which provided for fixed hourly labor rates, and that, if Metropolitan had been advised during discussions of the agency's concern in this regard, it would have informed the agency that [DELETED] use DCAA-approved accounting systems. Id.

Again, we find no competitive prejudice to Metropolitan. First, even if Metropolitan had been advised that the agency intended to take into account in the evaluation whether offerors had a DCAA-approved cost-based accounting system, Metropolitan has not demonstrated that discussions would have materially affected its evaluation. The fact that [DELETED] use DCAA-approved cost-based accounting systems would not alter the fact that Metropolitan does not. More importantly, the contemporaneous evaluation record indicates that this was but one of a number of discriminators taken into account by the agency. In this regard, Metropolitan has made no showing that the higher, exceptional rating for CTI's proposal under the quality control evaluation factor (the second most important technical evaluation factor) was unreasonable, and, as discussed above, DEA reasonably found CTI's proposal to be superior to Metropolitan's under the management plan factor (the third most important technical evaluation factor). Given CTI's evaluated superiority under the second and third most important technical evaluation factors, the acceptable ratings for both proposals under the most important factor (qualified personnel), and the fact that technical considerations were substantially more important than price, we cannot conclude that Metropolitan would have had a reasonable chance for award had the agency not taken offerors' accounting systems into account in the evaluation.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel